PETITION FOR WRIT OF CERTIORARI
AND APPENDIX

In the

Supreme Court of the United States

Spring Term, 1961

No. 5

Petition for Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

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In the

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Spring Term, 1961

No. ____

LEO PRYOR,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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To the Chief Justice of the United States Supreme Court or the Justice Duly Allotted to the Fourth Circuit:

Now comes the petitioner, Leo Pryor, and pursuant to the provisions of Rule 23 of the Supreme Court Rules, respectfully showeth the following:

First

That in a criminal action originating in the United States District Court for the Eastern District of North Carolina entitled United States of America vs. William Henry Bryant, Leo Pryor, et als., your petitioner was convicted of unlawfully and knowingly conspiring, in violation of Section 371 of Title 18, U. S. Code, to commit the offense of

transferring marihuana without proper written order in violation of Title 26, U. S. Code, Section 4742(a), and convicted of the substantive offense of unlawfully transferring 11.08 kilograms of marihuana other than in pursuance of a lawful order therefor in violation of Title 26, U. S. Code, Section 4742(a). From sentences imposed by the Trial Court, wherein petitioner received a sentence of five years in the first count and twelve years in the subsequent count, said sentences to run concurrently, he, in apt time, appealed to the United States Court of Appeals for the Fourth Circuit, assigning error. The matter came on to be heard before such Court of Appeals at the September 26, 1960, Term thereof and was heard before the Court on September 28, 1960. On November 2, 1960, opinion was filed by the United States Court of Appeals for the Fourth Circuit affirming the conviction and sentences. That copy of such opinion is appended hereto and made a part hereof.

Second

Jurisdiction of the Supreme Court of the United States is invoked from the judgment and opinion of the United States District Court of Appeals for the Fourth Circuit upon its opinion and entry of the judgment affirming the conviction and sentences of the United States District Court for the Eastern District of North Carolina on November 2, 1960, the original indictment having alleged violations of the Statute Law of the United States, as set forth in the preceding paragraph hereof, and having alleged the violations as occurring within the jurisdiction of the Eastern District of North Carolina. At the time of this petition no order respecting a rehearing has been filed. The statutory provisions believed to confer jurisdiction on the United States Supreme Court to review the

judgment or decree in question by writ of certiorari is Title 28, Section 1254, which provides "cases in the Court of Appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree". That under date of November 25, 1960, the Honorable Earl Warren, Chief Justice of the United States, issued order granting an extension of time within which to petition for certiorari "to and including January 2, 1961".

Third

There are two questions presented for review: (1) Did the Court err in admitting against your petitioner an alleged confession made in his absence by a co-defendant, William Henry Bryant, when, by its very language, its sole purpose was to incriminate your petitioner? The co-defendant, William Henry Bryant, had been arrested while having in his possession 11.08 kilograms of marihuana. There was evidence connecting him with two other sales of marihuana to the undercover agent. The witness, Greenfeld, told Bryant, "you were arrested about half hour ago in possession of about 25 pounds of marihuana. You were confronted with Agent Patch to whom you made two sales of bulk marihuana for a total of $700.00. We are particularly interested in your source of supply. From whom did you obtain the 25 pounds of marihuana which was seized from you this evening? Answer: I got it from Leo Pryor at his house in Garner just outside of Raleigh. I went to his house and picked up the sack which he turned over to me". The Government witness, Patch, testified that immediately after the statement he went to the home of your petitioner.

While the Court attempted to limit the affect of the statement to Bryant, it dealt not with Bryant's guilt as to any count in the indictment, but had as its sole purpose a successful attempt to connect your petitioner with the transaction, denying him the right of confrontation. (2) Did the Court err in refusing to grant motions for judgment of acquittal made by your petitioner when there was no evidence of his participation in the conspiracy until after the alleged conspiracy was concluded and no direct evidence that this petitioner transferred marihuana? There were three transfers of marihuana involved. The co-defendant, Bryant, made these transfers. Bryant was arrested with the approximately 11.08 kilograms of marihuana. After his arrest he made the statements connecting your petitioner with these transactions. Your petitioner was not present at the time. The Officers thereafter testified that they attempted to pay your petitioner in part for the marihuana which had been seized and that he actually took $500.00 of their money. There was nothing else to connect him directly with any transaction and the only circumstance shown was one of casual association. The opinions of the Circuit Courts are in conflict as to whether or not one may be linked with a conspiracy after its completion by arrest of a principal and seizure of the contraband.

Fourth

The first question presented involves the constitutional safeguard as set forth in the sixth amendment to the Constitution of the United States guaranteeing to petitioner the right "to be confronted with the witnesses against him". The second question presented involves the very language of Title 18, Section 371, U. S. Code, which provides that "if two or more persons conspire—and one or more of such

persons do any act to effect the object of the conspiracy—". This Court, together with the Circuit Courts, have held that a conspiracy ends at the moment of any conspirator's arrest since at that time the conspiracy has been thwarted. The opinion of the United States Court of Appeals for the Fourth Circuit is set forth in the appendix hereto, as is the judgment of such court.

Fifth

This criminal action was instituted through the Grand Jury for the United States District Court in the Eastern District of North Carolina. Your petitioner was charged with a conspiracy to unlawfully transfer marihuana and also with the substantive count of transferring marihuana. There were four counts in the indictment. Your petitioner was not named in the second count. Judgment of acquittal was allowed as to the third count. He was convicted on the two counts above referred to. Objections and motions were made in apt time.

On July 16, 1959, Richard M. Patch, a Federal Narcotic Agent, met the co-defendant, William Henry Bryant, in Raleigh. As a result of this meeting Patch purchased two pounds of marihuana at a price of $100.00 per pound from another co-defendant, William Treadwell. On August 6th five additional pounds were delivered to the agent by still another defendant, Bessie Lee Ward. Bryant was paid the sum of $500.00 for the second deal.

On August 18th Bryant, who had been under surveillance, was arrested with twenty-five pounds of marihuana. After his arrest he made statement to Officers Patch and Greenfeld that Leo Pryor, your petitioner, was his source of supply. Your petitioner was not present at the time the statement was made although the same was admitted as evi-